



2021 Annual Conference

Niagara Falls, New York

**Marriage Ceremony/Oaths and Notary Public
What Every Judge Needs to Know**

September 28, 2021

Presented by:

Hon. Barbara Seelbach

Timothy Cooper, Esq.

1.0 MCLE (0.5 Skills, 0.5 Professional Practice)

This program has been approved for credit in New York State for all attorneys including those who are Newly Admitted (less than 24 months) and administered by the Onondaga County Bar Association.

Presenters

Timothy Cooper, Esq.

Timothy Cooper, an Evans Town Justice since 1986, has served the field of law since 1980 when he received his Juris Doctor degree from State University of New York at Buffalo.

Prior to earning his law degree, Timothy majored in political science, graduating Summa Cum Laude with a BA degree from the University of Buffalo in 1977. There he was elected to Phi Beta Kappa.

Tim practiced law for 20 years before becoming a Support Magistrate in Family Court. He was elected to various offices, including President of the Erie County and the New York State Magistrates Associations. For over twenty years he has been on the faculty of the Office of Court Administration Continuing Judicial Education, serving as an instructor in Basic and Advanced Certification courses in the Eighth Judicial District and at Potsdam College.

Timothy Cooper has been active in the American Diabetes Association serving as President of the Western New York Chapter and Board Chairman of the New York State Affiliate. He has been Chairman of the Board of Trustees of Lakeshore Hospital since 1998.

Hon. Barbara Seelbach

Judge Seelbach has spent the majority of her career working in the field of personal injury as a claims negotiator for insurance carriers and for major law firms where she successfully settled personal injury cases at mediation and arbitration proceedings. In 2004, she began her public service career as a member of the Clinton Town Board where, in addition to her legislative duties, she was appointed liaison to the planning board and zoning board. In 2006, she decided to run for Town Justice and she has been on the bench ever since. She is currently employed as the Confidential Secretary to former Pine Plains Justice and current Dutchess County Supreme Court Justice Christi J. Acker. During her tenure as town justice, she was elected Secretary, Vice President and President of the Dutchess County Magistrates Association. In September of 2015, she joined the ranks of the NYSMA as a Director and she is currently serving a second term. Her prior teaching experience for the association include classes on the topics of small claims, summary proceedings and marriage and oaths.

Welcome to Niagara Falls,
The Honeymoon Capital of New York!





Performing Marriage Ceremonies

Timothy Cooper, Town of Evans (ret.), Family Court Support Magistrate (ret.)

Barbara Seelbach, Town of Clinton
NYSMA Director

Anti-Child Marriage Law Provisions Effective July 20, 2017

► To obtain a valid marriage license, individuals 17 years of age require written permission from a justice of the Supreme Court or judge of the Family Court having jurisdiction over the town or city in which the application is made as well as written parental/legal guardian approval where applicable (See Domestic Relations Law §15, subs. 1-4).

► Individuals below the age of 17 will no longer be permitted to be married in New York State (DRL §15-a).

Presentation Overview

- What's Solemnization?
 - No common-law marriage
 - No particular form of ceremony required
- Marriage Equality Act Issues
- New Age & License Issues
- Time Requirements
- Retired Justices' Ability to Perform Marriage Ceremonies
- Fees & Payments - Instances where and when compensation can be accepted
- Summary, Questions and Answers

Solemnization

► **Solemnization** is that part of the marriage ceremony where the parties must solemnly declare in the presence of the justice and at least one witness that they take each other as husband and wife (DRL §12).

► Note: When necessary to implement the rights and responsibilities of spouses under the law, all gender-specific language or terms shall be construed in a gender-neutral manner in all such sources of law (DRL §10-a[2]).

Marriage Equality Act

• The **Marriage Equality Act** is a 2011 New York State law that allows gender-neutral marriages for both same- and opposite-sex couples. Introduced in the New York State Assembly, the Act was signed into law on June 24, 2011, and took effect on July 24, 2011 (DRL § 10-a[1]).

ADVISORY COMMITTEE ON JUDICIAL ETHICS
Opinion 16-56

Must a judge solemnize/perform marriage ceremonies?

- ▶(1) Unless a judge is required by law or rule to perform marriages, a judge may adopt a policy to decline to perform all weddings.
- ▶(2) A judge who declines to perform weddings may permit court staff to refer couples to another incumbent public official who is authorized to solemnize marriages.

Translation?

- ▶If you do one, you do all . . .
- ▶If you don't do all, you do none . . .
- ▶Exception – close friends and family
- ▶Exception to the exception – not to be a tool for discrimination

Key Steps

- ▶ Review the license
- ▶ Witness and Signature (Justice Plus one Witness)
- ▶ New Age Limit
 - ▶ 16 or Younger - Not Permitted
 - ▶ 17 Years - Requires Approvals
 - ▶ 18 Years or Older – No Approval
- ▶ Time Requirements
- ▶ Where can the marriages be performed? Geographical jurisdiction issues
- ▶ Solemnize
- ▶ Failure to send in the license after five days/misdemeanor

Best practice hints

- ▶ Make sure that no party is under obvious duress.



More best practices

- ▶ Use court translator if necessary.
- ▶ Do not use "if anyone here can show good cause ... because someone will!"
- ▶ If they want an outside wedding, ask if they have a Plan B for rain.

Solemnization and Witness Requirement

- ▶ The Domestic Relations Law does not provide an age limit to be a witness.
- ▶ It is recommended that the witness be competent to testify in a court proceeding should the solemnization become contested.
- ▶ Frequently, parties will request a child to act as a witness and it is recommended that an adult also act as an additional witness in such circumstances.

Form of Wedding Ceremony

- ▶ No particular form or ceremony is required to solemnize a marriage; a copy of a suggested ceremony may be obtained on the City, Town and Village Resource Center Website.
- ▶ http://www.nycourts.gov/courts/townandvillage/judges_only/topics/marriage.shtml

Reviewing the Marriage License

- ▶ Before solemnizing a marriage and conducting a ceremony, the justice should review the marriage license to make sure that a valid New York State marriage license has been issued (DRL §13).
- ▶ Check the parties' ages on the application as well as their proper addresses.

Reviewing the Marriage License: Age Limits

- ▶ To obtain a marriage license, individuals 17 years of age require written permission from a justice of the Supreme Court or judge of the Family Court having jurisdiction over the town or city in which the application is made as well as written parental/legal guardian approval where applicable (See DRL §15)
- ▶ Individuals below the age of 17 will be no longer permitted to be married in New York State (DRL §15-a).

Reviewing the Marriage License

- ▶ There are no consent requirements for applicants 18 years of age or older (DRL §7(l)). See Sample Affidavit, License and Certificate of Marriage in Handout.

Time Frame for Solemnization

- ▶ The justice must check the license to determine if 24 hours have elapsed since the license was issued (DRL §13-b).
- ▶ This provision allows the parties a brief period to reflect before the marriage is performed. The 24-hour period may be waived in certain circumstances.

Time Frame for Solemnization

- ▶ Make sure to check that 60 days have not elapsed since the license has been issued (DRL §13-b).
- ▶ If the time period has elapsed and the marriage has not been solemnized, the parties are required to obtain a new license.

Expedited Requests

▶ A judge or justice of the supreme court of this state or the county judge of the county in which either party to be married resides, or if such party is at least seventeen years of age, the judge of the family court of such county, may make an order authorizing the immediate solemnization of the marriage and upon filing such order with the clergyman or magistrate performing the marriage ceremony... (see DRL §13-b for additional requirements)

Time Frame for Solemnization

- ▶ The justice is required to enter on the license (or attach to the license) the date and hour the marriage is solemnized, which helps to verify and ensure that the justice complies with the waiting period requirement (DRL §13-b).
- ▶ After the marriage has been solemnized, the justice must return the license to the office of the city or town clerk who issued the license within five days succeeding the date the justice solemnized the marriage (DRL §14).

Sign & Return the License

▶ Upon completion of the solemnization, the justice and at least one witness must sign the license (1967 Op. Atty. Gen. 160, DRL §12).

"...the judge before whom acknowledgment is made shall forward such contract and marriage license to the office of the town or city clerk who issued the license within five days succeeding the date of the solemnizing of the marriage therein authorized and any person or persons who shall willfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than fifty dollars for each and every offense." (DRL §14)

Jurisdiction for Justice to Solemnize

- ▶ A town or village justice may solemnize a marriage anywhere within the territorial limits of New York State (DRL §11[6]).
- ▶ If a city, town or village justice solemnizes a marriage outside of the territorial jurisdiction in which he or she presides, the justice must affix the official seal of the court to the license prior to filing (DRL §14).

Apply the Court Seal to all!



Jurisdiction for Justice to Solemnize

- ▶ If a town or village justice seeks to perform a marriage within the City of New York, he/she must first register his/her name and address with the Clerk of the City of New York (DRL §11-b).

NYC Registration

- ▶ New York State law requires any person who performs a marriage ceremony within the city of New York to register with the City Clerk in their Manhattan office located at 141 Worth Street, New York, NY 10013 or on line:
http://www.cityclerk.nyc.gov/html/marriage/officiant_reg.shtml

Out of State Weddings

- ▶ Check with that state's Secretary of State.
- ▶ Nearby states that will allow you to perform a wedding: Massachusetts, Vermont, New Hampshire.

Retired Justices

- ▶ Judiciary Law section §212(2)(k) provides that, upon application, the Chief Administrator of the Courts may certify former judges and justices of the Unified Court System, who have served for at least two years in such position, to solemnize marriages.
- ▶ Applications are available by calling the Resource Center at (800) 232-0630.

Payment

► General Municipal Law §805-b was amended to allow justices to accept up to \$100, whether in the form of money, property, services or entertainment, for the solemnization of a marriage “at a time and place other than the public officer’s normal place of business, during normal hours of business.” A town or village judge’s ‘normal hours of business’ means those hours which are officially scheduled by the court for performing the judicial function (see, General Municipal Law §805-b).

Quiz Time

- Can you charge the \$100 fee if you perform a wedding in the courtroom on a Saturday when Court is normally closed?
- Can you charge the \$100 fee if you perform a wedding in a local restaurant when your clerks are back in the court office holding usual business hours?

Quiz time

- Must you charge the fee?



Who else can legally perform wedding ceremonies?

▶ The Answer lies in Domestic Relations Law Section 11

the current or a former governor;
• the mayor of a city or village;
• the former mayor, the city clerk or one of the deputy city clerks of a city of more than one million inhabitants;
• a marriage officer appointed by the town or village board or the city common council;

• a justice or judge of the following courts: the U.S. Court of Appeals for the Second Circuit, the U.S. District Courts for the Northern, Southern, Eastern or Western Districts of New York, the New York State Court of Appeals, the Appellate Division of the New York State Supreme Court, the New York State Supreme Court, the Court of Claims, the Family Court, a Surrogates Court, the Civil and Criminal Courts of New York City (including Housing judges of the Civil Court) and other courts of record;

• a member of the clergy or minister who has been officially ordained and granted authority to perform marriage ceremonies from a governing church body in accordance with the rules and regulations of the church body;
• a member of the clergy or minister who is not authorized by a governing church body but who has been chosen by a spiritual group to preside over their spiritual affairs;

• other officiants as specified by Section 11 of the Domestic Relations Law.

The officiant does not have to be a resident of New York State.

NOTE: Ship captains are not authorized to perform marriage ceremonies

Can a Judge incorporate religious customs into the ceremony?

Town justice, on request of couple being married, may incorporate religious customs into civil marriage ceremony.
Ops Adv Comm Jud Ethics No. 89-115.

Can you perform wedding ceremonies as a side business?

▶ Judge may not engage in "business" of performing marriages nor solicit requests for such services as for-profit business would, or otherwise actively seek to be engaged in such activity. Ops Adv Comm Jud Ethics No. 08-74

Can you charge travel expenses incurred?

▶ Judge may be reimbursed for reasonable travel expenses incurred in order to perform wedding. Ops Adv Comm Jud Ethics No. 08-74

Questions please!

▶ Please contact the Office of Justice Court Support if further information or assistance is needed.

Office of Justice Court Support
187 Wolf Road, Suite 103
Albany, NY 12205
Tel: 518-238-4339 or 800-232-0630
Fax: 518-438-3518

Handouts

- Marriage license review checklist
- Sample vows 1
- Sample vows 2
- Publication 4210 from NYS Dept. of Health "Getting Married in New York State"

Thank you!

Oats



WHAT JUDGES NEED TO KNOW!

Oaths and Notary Public What Judges Need to Know!

Timothy Cooper, Town of Evans (ret.), Family Court Support
Magistrate (ret.)

Barbara Seelbach, Town of Clinton, NYSMA
Director



CPLR 2309(a) and (b) OATHS OR AFFIRMATIONS

- ▶ **(a)** Persons authorized to administer. Unless otherwise provided, an oath or affirmation may be administered by any person authorized to take acknowledgments of deeds by the real property law. Any person authorized by the laws of this state to receive evidence may administer an oath or affirmation for that purpose. An oath to a juror or jurors may be administered by a clerk of court and his deputies. This section shall not apply to an oath of office.
- ▶ **(b)** Form. An oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.
- ▶ (NOTE: a T/V Justice may only administer an oath or affirmation or take deposition within the county that their town or village is located.

The Judge's Authority

- ▶ A judge has limited notary powers but is not a notary by virtue of being a judge. (CPLR 3113)
- ▶ You can:
 - ▶ Take depositions
 - ▶ Administer oaths and acknowledgements (within your county.) You can do this outside of your county if you are a licensed Notary.
 - ▶ You can't authenticate a nominating petition as a judge (unless you are a licensed Notary; more about that later!)

Are you a notary public? **NO...**
but you do have limited authority to:

- ▶ Administer an oath or affirmation
- ▶ Acknowledge under RPL Section 298
- ▶ Take deposition

In all circumstances, justices should **be aware** of the document being acknowledged and the **ethical implications** of identifying themselves and their office.

If the inclusion of their name and position on the document could be viewed as an attempt at seeking favorable or special treatment for the individual whose signature is being acknowledged, there may be professional consequences.

How to sign an acknowledgement
or written oath

- ▶ Your Name
- ▶ Your title (Town Justice, Village Justice, Associate Village Justice)
- ▶ Your municipality, county and State of New York
- ▶ Your term expiration date

How to administer the oath

- ▶ In person *only!*
- ▶ Ask for ID if you do not know the person.
- ▶ They must swear or affirm to tell the truth or that the document is true.
- ▶ You can not accept a fee for matters in your court. Other fees are listed in the handout.

Sample Certificate of Acknowledgment RPL Section 306

- ▶ State of New York)
County of *[name of county]*
- ▶ On the ____ day of _____, in the year _____, before me, the undersigned, _____ personally appeared before me or submitted satisfactory evidentiary proof to me to be the individual whose name is subscribed to the within instrument and acknowledged to be that *[he/she/they]* executed the same in *[his/her/their]* capacity(ies), and that by *[his/her/their]* signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.
- ▶ *[Signature of Justice taking acknowledgment]*

Town Justice *[Print Name of Justice taking acknowledgment]*
Town of _____
Term expires _____

Danger Will Robinson!

The case of the napping spouse

Swearing in officers of a political party, unless in window period

Swear or affirm? So help me God?



More concerns . . .

- ▶ Only administer oaths in the county where your court is located (unless you are a licensed Notary!)
- ▶ In all circumstances, justices should be aware of the document being acknowledged and the ethical implications of identifying themselves and their office. If the inclusion of their name and position on the document could be viewed as an attempt at seeking favorable or special treatment for the individual whose signature is being acknowledged, there may be professional consequences. (See, *In the Matter of Sullivan, Commission on Judicial Conduct Determination*, March 13, 2017.)

*In the Matter of Sullivan, Commission on Judicial Conduct
Determination, March 13, 2017.*

- ▶ There, a Town Justice had notarized a letter being submitted to a Village Court, in which the defendant sought to plead guilty to a charge that he had previously rejected. The Commission concluded that by signing his name and judicial title beneath the defendant's signature, the justice "added his judicial clout and imprimatur to the defendant's request," and that such conduct is prohibited by well-established ethical standards prohibiting a judge from lending the prestige of judicial office to advance private interests and requiring a judge to avoid even the appearance of impropriety.

Questions please!

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Thank you for your service to your communities!



